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Dec. Dig. § 109.\* 12 Va.-W. Va. Enc. Dig. 777; 14 Va.-W. Va. Enc. Dig. 954.]

**3. Statutes (§ 141\*)—Amending Acts—Reference to Amended Act —“Title.”**—Acts 1914, c. 107, which is entitled an act to amend a certain act therein specified, and the exacting clause of which provides that section 12 be amended so as to read as follows, sufficiently complies with Const. 1902, § 32, which provides that no law shall be revived or amended with reference to its title, but the act shall be re-enacted and published at length, since the title, which is defined as that part of an act by which it is known and distinguished from other acts, may be referred to to identify the act amended.

[Ed. Note.—For other cases, see Statutes, Cent. Dig. §§ 48, 198, 209; Dec. Dig. § 141.\* 12 Va.-W. Va. Enc. Dig. 777; 14 Va.-W. Va. Enc. Dig. 954.]

For other definitions, see Words and Phrases, First and Second Series, Title.]

**4. Highways (§ 93\*)—District Officers—Qualifications—Freehold.**—The provision of Acts 1910, c. 106, that two of the members of each district road board must be freeholders, is contrary to Const. 1902, § 32, providing that every person qualified to vote shall be eligible to any office, and renders invalid so much of that act as relates to the appointment and powers of the district road boards.

[Ed. Note.—For other cases, see Highways, Cent. Dig. §§ 304-307; Dec. Dig. § 93.\* 12 Va.-W. Va. Enc. Dig. 930.]

Appeal from Circuit Court, Fauquier County.

Suit by E. M. Spilman against the District Road Board of Center Magisterial District of Fauquier County. Decree for the plaintiff, and defendant appeals. Modified and affirmed.

*John S. Barbour*, of Fairfax, and *Keith & Richards* and *G. Latham Fletcher*, all of Warrenton, for appellant.

*William Horgan*, of Warrenton, for appellee.

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VIRGINIA RY. & POWER CO. *v.* SMITH.

March 11, 1915.

[84 S. E. 641.]

**1. Municipal Corporations (§ 705\*)—Use of Streets—Negligence—Wagons Having Right of Way.**—The driver of defendant's repair wagon, which under an ordinance had the right of way on sounding its gong, requiring other vehicles aware of its approach to stop on the extreme right of the street, while hurrying to repair a fallen trolley wire, and while continuously sounding the gong, observed the danger of a collision with an automobile on the right side of the

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

street, and applied the brakes and slowed down the speed of his horses, and would have averted the collision but for the fact that the tire of a wheel of the wagon caught on the street car rail and the wheel slipped or skidded, causing the front wheel of the wagon to swing toward the car and strike plaintiff. Held that there was no actionable negligence on the part of the driver, but an accident for which the defendant was not liable in damages.

[Ed. Note.—For other cases, see *Municipal Corporations*, Cent. Dig. §§ 1515-1517; Dec. Dig. § 705.\* 12 Va.-W. Va. Enc. Dig. 885; 14 Va.-W. Va. Enc. 974; 15 Va.-W. Va. Enc. 936.]

**2. Negligence (§ 4\*)—"Ordinary Care."**—"Ordinary care" and its lack must largely depend on circumstances surrounding the particular transaction, and generally greater danger calls for the exercise of greater care to avoid it.

[Ed. Note.—For other cases, see *Negligence*, Cent. Dig. § 6; Dec. Dig. § 4.\* 10 Va.-W. Va. Enc. Dig. 355; 14 Va.-W. Va. Enc. 764.

For other definitions, see *Words and Phrases*, First and Second Series, *Ordinary Care*.]

**3. Negligence (§ 121\*)—Operation—Personal Injury—Presumption and Burden of Proof.**—In an action to recover damages for personal injuries, negligence will not be presumed, but the burden rests upon plaintiff to prove it affirmatively and by a preponderance of the evidence.

[Ed. Note.—For other cases, see *Negligence*, Cent. Dig. §§ 217-220, 224-228, 271; Dec. Dig. § 121.\* 10 Va.-W. Va. Enc. Dig. 402; 14 Va.-W. Va. Enc. Dig. 771; 15 Va.-W. Va. Enc. Dig. 730.]

Error to Law and Chancery Court of City of Norfolk.

Action by Herbert L. Smith against the Virginia Railway & Power Company. Judgment for plaintiff, and defendant brings error. Reversed, and remanded for new trial.

*H. W. Anderson* and *A. D. Christian*, both of Richmond, and *W. H. Venable*, of Norfolk, for plaintiff in error.

*Willcox, Cooke & Willcox*, of Norfolk, for defendant in error.

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BAYLY et al. v. CURLETTE et al.

March 11, 1915.

[84 S. E. 642.]

**1. Wills (§ 506\*)—Construction—"Heirs."**—In a devise to the grandchildren of testatrix, "the present heirs and those that may hereafter be of my son," the word "heirs" is obviously used as synonymous with children.

[Ed. Note.—For other cases, see *Wills*, Cent. Dig. §§ 1090-1099;

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.